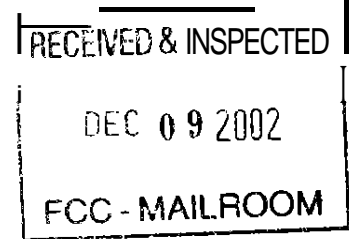


Federal Communications Commission

DA 02-3366

Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
East Carroll Parish School Board)
Lake Providence, Louisiana)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-232946

CC Docket No. 96-45

CC Docket No. 97-21J

ORDER

Adopted: December 5, 2002

Released: December 6, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Wireline Competition Bureau is a Request for Waiver by East Carroll Parish School Board (East Carroll), Lake Providence, Louisiana.¹ East Carroll requests a waiver of the filing deadline of October 28, 2001 for filing an FCC Form **486** in Funding Year 2001 of the schools and libraries universal service support mechanism.² For the reasons set forth below, the Request for Waiver is denied.

2. The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) administers the schools and libraries support mechanism under the direction of the Commission.³ After an applicant for discounted services

¹ Facsimile from Helen Millikin, East Carol Parish School Board, to Federal Communications Commission, filed January 28, 2002 (Request for Waiver).

² Request for Waiver. In prior years, Funding Year 2001 was referred to as Funding **Year 4**. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on **July 1, 2001** and ended on June 30, 2002, is now called Funding Year 2001. The funding period that began on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

³ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docker Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998)

under the schools and libraries support mechanism has entered into agreements for eligible services with one or more service providers, it must file with SLD an FCC Form 471 application.⁴ The FCC Form 471 notifies SLD of the services that have been ordered and supplies an estimate of funds needed to cover the discounts to be given for eligible services.⁵ SLD then issues a funding commitment decision letter indicating the discounts, if any, to which the applicant is entitled. After the funding year begins and the discounted service commences, the approved recipient of discounted services submits to SLD an FCC Form 486, which indicates that the service has begun and specifies the service start date.⁶ After receiving the FCC Form 486, SLD will accept invoices from the service provider and issue disbursements to the provider in cumulative amounts up to the amount of the discount awarded.⁷

3. With the passage of the Children's Internet Protection Act (CIPA), Congress amended section 254 ~~of~~ the Act, imposing new conditions on schools and libraries that "hav[e] computers with Internet access" and request discounted services under the schools and libraries universal service support mechanism.⁸ Under section 254(h)(5), no school may receive universal service discounts unless the authority with responsibility for administration of the library *makes* certain certifications, and ensures the use of such computers in accordance with the certifications."

4. Congress established the conditions on the use of computers with Internet access in two separate acts, CIPA, which added section 254(h)(5) (establishing certification requirements for schools) and (h)(6) (establishing similar requirements for libraries), and the Neighborhood Children's Internet Protection Act (NCIPA), which added section 254(l) (establishing additional requirements for both schools and libraries)." Under section 254(h)(5), which governs schools, applicants are required to certify that they are enforcing a policy of Internet safety as defined in NCIPA, and that their policy of Internet safety also includes the use of a "technology protection measure," colloquially referred to as a software filter, that is in

⁴ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁵ 47 C.F.R. § 54.504(c).

⁶ Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) (FCC Form 486); Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (July 2001) (Form 486 Instructions). In addition, an early filing option exists for Funding Year 2001 applicants whose services begin on or before October 28, 2001 and for applicants in subsequent funding years whose services begin on or before July 1 of the funding year. See FCC form 486.

⁷ See FCC Form 486; Form 486 Instructions

⁸ 47 U.S.C. § 254(h)(5)(A). Section 254(h)(6)(A) applies the same requirements to libraries. However, as noted below, this latter section was recently found to be unconstitutional. See *infra*, note 24.

⁹ Hereinafter we will refer collectively to all of the persons specified in the statute as responsible for making these certifications on behalf of participating schools and libraries as "entities."

¹⁰ See Neighborhood Children's Internet Protection Act (NCIPA), Pub. L. 106-554 §§ 1731 *et seq.*

accordance with requirements specified in the CIPA provisions.” Under NCIPA, codified at 254(h)(1), schools are required to adopt and implement an Internet safety policy that addresses (1) access by minors to inappropriate material on the Internet, (2) the safety and security of minors when using electronic communications, (3) unauthorized access, (4) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and (5) measures designed to restrict minors’ access to material harmful to minors.”

5. To implement these new provisions, the Commission issued the *CIPA Order*, which, *inter alia*, added new certifications for CIPA and NCIPA to the FCC Form 486 beginning in Funding Year 2001.¹³ In cases of consortium applicants, the Commission put the certifications on a new FCC Form 479, which must be completed by each of the consortium members and then collected and retained by the consortium leader.¹⁴ The Commission also amended its rules, adding the CIPA requirements at section 54.520.¹⁵

6. In accordance with CIPA’s requirement that applicants in Funding Year 2001 make their certifications within 120 days of the start of the funding year, the Commission added an additional deadline to the normal 120 day rule for FCC Forms 486. Under CIPA, Funding Year 2001 applicants were required to file their FCC Forms 486 by no later than October 28, 2001 unless their service began after that date or a funding commitment decision letter issued after that date.¹⁶ A Funding Year 2001 applicant with a funding Commitment decision letter who failed to meet the October 28, 2001 deadline could obtain discounts only for services received on or after the date that its FCC Form 486 was postmarked.”

7. In the instant case, East Carroll filed a Funding Year 2001 FCC Form 486 on August 6, 2001.¹⁸ However, on October 22, 2001, SLD issued a letter rejecting the FCC Form 486 because East Carroll had failed to check any of the CIPA certifications.” East Carroll then submitted a second FCC Form 486, which included the proper certifications, on October 30,

¹¹ 47 U.S.C. §§ 254(h)(5), 254(h)(6). These software filters are designed to block access to Internet sites containing sexually explicit or otherwise objectionable material. *See American Library Association, Inc. v. United States*, Nos. CIV.A. 01-1303, CIV.A. 01-1322, 2002 WL 1126046, *23-26 (E.D. Penn. May 31, 2002).

¹² *See* NCIPA, Pub. L. 106-554 § 1732, codified at 47 U.S.C. § 254(l).

¹³ *See Federal-State Joint Board on Universal Service, Children’s Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182 (2001) (*CIPA Order*); 47 C.F.R. § 54.520.

¹⁴ *CIPA Order*, 16 FCC Rcd at 8194, para. 25

¹⁵ 47 C.F.R. § 54.520.

¹⁶ 47 U.S.C. §§ 254(h)(5)(E), 254(h)(6)(E); *CIPA Order*, 16 FCC Rcd at 8188-89, 8191, paras. 10, 18

¹⁷ *See* Form 486 Instructions at 9.

¹⁸ FCC Form 486. East Carroll Parish School Board, filed August 6, 2001.

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Helen Millikin, East Carroll Parish School Board, dated October 22, 2001 (Rejection Letter).

2001.²⁰ On December 21, 2001, SLD issued a Form 486 Notification Letter stating that, while the Second Form 486 was accepted, SLD was reducing the funding awarded because of the CIPA deadline.²¹ Specifically, it provided funding only for services provided on or after the FCC Form 486 filing date of October 30, 2001, instead of the funding year start date of July 1, 2001.²² East Carroll then filed the pending Request for Waiver, seeking a waiver of the October 28, 2001 deadline.²³

8. Initially, East Carroll asserts that the Second Form 486 was filed on October 26, 2001, not October 30, 2001.²⁴ East Carroll asserts that it has a return receipt dated October 26, 2001 to support its assertion.²⁵ If the Second Form 486 were in fact filed on October 26, 2001, then East Carroll would not have missed the CIPA-imposed October 28, 2001 filing deadline. However, after reviewing the record, we find that SLD correctly concluded that the Second Form 486 was filed on October 30, 2001. The record includes a copy of the Federal Express package, addressed to “SLD – Form 486” and clearly postmarked on October 30, 2001.²⁶ Further, East Carroll has not produced the return receipt that it describes or any other evidence of a filing date contrary to the one demonstrated by the Federal Express package. We therefore find that East Carroll filed the Second Form 486 on October 30, 2001, after the CIPA deadline.

9. East Carroll argues that it is entitled to a waiver of the deadline because of the period of time between the submission of its original FCC Form 486 and the issuance of SLD’s rejection letter.²⁷ East Carroll also asserts that the delay in the receipt of the Rejection Letter may have been due partly to delays in the postal system following the events of September 11, 2001.²⁸

10. We find that East Carroll’s request for a waiver must be denied. Although the Commission has authority to waive regulatory requirements, it does not have authority to waive a requirement imposed by statute.²⁹ The October 28, 2001 deadline for schools receiving

²⁰ FCC Form 486, East Carroll Parish School Board, filed October 30, 2001 (Second Form 486).

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Helen Millikin, East Carroll Parish School Board, dated December 21, 2001 (Form 486 Notification Letter), at 4.

²² *Id.*

²³ Request for Waiver.

²⁴ *Id.* at 1-2.

²⁵ *Id.* at 2.

²⁶ Second Form 486, attachment.

²⁷ *Id.* at 1-2.

²⁸ Request for Waiver at 2-3. In fact, the record does not reflect any unusual delay in the delivery of the Rejection Letter. It was issued on October 22, 2001 and was received no later than October 30, 2001. *See* Rejection Letter; Second Form 486, attachment.

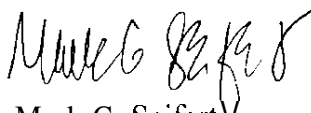
²⁹ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 7170, para. 13 (1999); *see also Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) (“the exercise of quasi-

Internet access and internal connections discounts to submit their CIPA certifications in Funding Year 2001 is set in the statute, which requires that CIPA certifications must be made within 120 days of the start of the first funding year following the effective date of the statute.³⁰ Because East Carroll was receiving discounts on Internet access, and was therefore subject to the October 28, 2001 deadline imposed by the CIPA statute, we are without authority to waive that deadline in this case.³¹

11. Finally, East Carroll asserts that the CIPA deadline should not be imposed on applicants seeking only discounts on telecommunications services.³² To the extent that East Carroll seeks a waiver on this basis, we reject the argument because, as noted above, East Carroll also received discounts on Internet access.³³

12. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed by East Carroll Parish School Board, Lake Providence, Louisiana on January 28, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to the limitations which that body imposes").

³⁰ 47 U.S.C. § 254(h)(5)(E)(i)(I); *see Federal-Bare Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, paras. 10-14(2001).

³¹ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Helen Millikin, East Carroll Parish School Board, dated July 23, 2001 (Funding Commitment Decision Letter). We note that United States District Court for the Eastern District of Pennsylvania has recently held the CIPA requirements, as applied to libraries, partially unconstitutional. *See American Library Association, Inc. v. United States*, Nos. CIV.A. 01-1303, CIV.A. 01-1322, 2002 WL 1126046 (E.D. Penn. May 31, 2002), *probable jurisdiction noted*, ___ S. Ct. ___, 2002 WL 31060372 (2002). Pursuant to this decision, the Commission has, *inter alia*, directed that Funding Year 2001 library applicants not be penalized for failure to meet CIPA's October 28, 2001 certification deadline. *See Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, FCC 02-196 (rel. June 28, 2002) (*CIPA II Order*). However, neither the court's decision nor the Commission's order in any way affected the CIPA obligations of school applicants. *See CIPA I Order*, para. 19.

³² Request for Waiver at 3

³³ See Funding Commitment Decision Letter; Second Form 486